

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List 401.00-00

Person to Contact:

199905034

Telephone Number:

Refer Reply to:

OP:E:EP:T:3

Date:

Att'n:

NOV 10 1998

Legend:

Individual A =

Parent B =

Subsidiary C =

Buyer D =

Group E =

Plan X =

Dear

This is in response to your request for a private letter ruling, dated March 23, 1998, and supplemented by additional correspondence dated July 7, 1998, which was submitted by your authorized representative. The request concerns the federal income tax consequences of certain transactions under section 401(k) of the Internal Revenue Code ("Code"). Your authorized representative submitted the following facts and representations in support of the requested rulings.

On Individual A, who owned all the shares of the issued and outstanding capital stock of Parent B (a holding company), entered into a stock purchase agreement with Buyer D to dispose of Parent B. Ninety percent of the stock of Subsidiary C was owned by Parent B. As a result of the transaction, Buyer D acquired Parent B including Parent B's interest in Subsidiary C. Buyer D also acquired the remaining 10 percent of the stock of Subsidiary C from the minority shareholders.

Plan X, a profit-sharing which includes a cash or deferred arrangement ("CODA") as described in section 401(k) of the Code, has been maintained for the benefit of the employees of Subsidiary C as well as for the employees of other

participating employers. You represent that Plan X is qualified under section 401(a), and its associated trust is qualified under section 501(a).

As of the closing date of the transaction, Group E employees of Subsidiary C ceased active participation in Plan X. These employees became eligible to participate in the employee benefit plans of Buyer D, by virtue of their employment with Subsidiary C, now owned by Buyer D. Plan X will continue to be maintained by another participating employer.

Based on the foregoing facts and representations, you have requested rulings to the following effect:

(1) Pursuant to Code Section 401(k)(10)(A)(iii), the above-described transaction constituted a "disposition by a corporation of such corporation's interest in a subsidiary" with respect to Group E.

(2) As a result of the first requested ruling, any lump sum distribution from Plan X to a former participant thereof who is a member of Group E will qualify as an eligible rollover distribution within the meaning of Code Section 402(c)(4); and each member of Group E who rolls over his or her distribution in accordance with Code Section 402(c)(3) will not be required to include the proceeds representing his or her interest in the Plan in his or her income in the year of the transfer.

Section 401(k)(2)(B)(i)(II) of the Code, when read together with section 401(k)(10)(A)(iii) and section 1.401(k)-1(d)(1)(v) of the Income Tax Regulations provides, in relevant part, that amounts attributable to elective deferrals may not be distributed from a cash or deferred arrangement before the date of the sale or other disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

Regarding the first requested ruling, the above described transaction consisted of the sale of Parent B through a stock purchase agreement between Individual A and Buyer D. There was no disposition of Subsidiary C by a corporation.

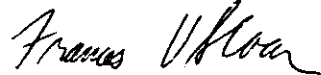
Accordingly, based on the facts presented, we have determined that the transaction described above does not constitute "a disposition by a corporation of such corporation's interest in a subsidiary" as described in section 401(k)(10)(A)(iii).

Page 3

Since we have determined that the subject transaction is not one described in section 401(k)(10)(A)(iii), we need not address your second ruling request.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,



Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose
Copy of Letter to Authorized Representative

cc: